



Attorney No. 5550-23

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Todd Anthony Layt
Serial No.: 10/663,928
Filing Date: September 16, 2003
For: *St. Augustine Grass Named 'B12'*

Art Unit: 1661
Examiner: Annette H. Para
Confirmation No. 2290

Date: December 21, 2004

Mail Stop Issue Fee
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

SUBMITTAL OF PRIORITY DOCUMENT

Sir:

To complete the requirements of 35 U.S.C. § 119, enclosed is a certified copy of the following priority document:

Australian Plant Breeders Rights Application No. 2002/342,
filed November 26, 2002.

If any extension of time for the accompanying response or submission is required, Applicant requests that this be considered a petition therefor. No fee is believed due, however, the Commissioner is hereby authorized to charge any deficiency, or credit any refund, to our Deposit Account No. 50-0220.

Respectfully submitted,

Karen A. Magri
Registration No. 41,965

CERTIFICATE OF EXPRESS MAILING

"Express Mail" mailing label number: EV473659656US
Date of Deposit: December 21, 2004

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Sarah Brunmeier

Customer No. 20792

Myers Bigel Sibley & Sajovec, P.A.
P. O. Box 37428
Raleigh, North Carolina 27627
Telephone: (919) 854-1400
Facsimile: (919) 854-1401

DEC 21 2004

APPLICATION FOR PLANT BREEDERS RIGHTS

Application Number: 2002/342

Variety Name: 'B12'

Botanical Name: Stenotaphrum secundatum

First Lodged: 26 November 2002

PART 1 - GENERAL INFORMATION

To: The Registrar
Plant Breeders Rights Office
GPO Box 858
CANBERRA ACT 2601
AUSTRALIA

Date stamp
RECEIVED
- 2 DEC 2002
PLANT BREEDER'S
RIGHTS
Technical Guideline No

NOTE: There are two parts to each PBR application form. This is the Part 1 form.

PART 1 - GENERAL INFORMATION: this form to be completed by the applicant or applicant's agent. There are five sections in this form. All the questions must be answered and the relevant sections must be signed by the applicant or applicant's agent. If necessary, please consult "Guidelines for Completing Part 1 Form".

PART 2 - DESCRIPTION OF NEW VARIETY: to be completed by the applicant, applicant's agent or accredited qualified person after the application is accepted. Part 2 must be certified by an accredited qualified person.

IMPORTANT: Please read the 'Guidelines for Completing Part 1 Application' before filling in this form.

SECTION A : General Information about the Applicant, Agent and Breeder

1. Name and Contact Details of the Applicant *The applicant is the breeder and/or owner of the variety. If the owner is not the original breeder, proof of ownership must be provided with this part of the application form (also see question 3 for more detail).*

Name of the Applicant: **Todd Anthony Layt**

(Please note that Plant Breeder's Rights will be granted under this name) :

Contact Person: 18/08/04 Assignment of Rights to:
(if different from above) Ozbreed Pty Ltd - KDR

Contact Address: 13 Ingold Lane
Clarendon NSW

Postcode: 2756

Telephone: 1...(02) 45775912.. Facsimile:..... Email:.....
2.....

ACN or Company Registration Number (if applicable):.....

CERTIFIED COPY OF ORIGINAL

..... for the Registrar, dated 8/14/04
PLANT BREEDERS RIGHTS AUSTRALIA

2. Name and Contact Details of Agent in Australia *An Australian agent is mandatory for the service of notices to overseas applicants. For Australian applicants this requirement is optional. An agent for an applicant requires authorisation to apply on the applicant's behalf - a form is attached. Please note that the name of agent listed here must be the same as in the 'Authorisation of Agent' form.*

Name of Agent:

Contact Person:
(if different from above)

Contact Address:

Postcode:

Telephone: 1..... Facsimile:..... Email:.....
2.....

ACN (if applicable):

3. Name and Address of the Breeder *When the breeder is an employee of an organisation and the variety was bred in the course of performing duties as an employee of that organisation, then consider the organisation as the breeder* as defined in section 3(1)(c) of Plant Breeder's Rights Act 1994*

Is the Applicant the breeder ? ☒ Yes ☐ No; if no please answer the following questions:

Name of the original breeder :

Address:

How were the ownership rights transferred to the applicant?

☐ By assignment ☐ By Will ☐ By other means

(Please attach the copy of this document with this application)

Copy of the Document Attached ? Yes ☐ No ☐

SECTION B: General Information about the Variety

4. Botanical name

Genus

Stenotaphrum

species

secundatum

Author(s)

5. Common name

Give the common name of the species

Buffalo Grass/St. Augustine Grass

6. Proposed name for the variety

If an application for this variety has already been lodged overseas then you must use the same name except if that name is already in common usage in Australia for a different variety. You are requested to complete a DEN 1 form (attached) to avoid processing delays if the variety name or synonym are unacceptable. Please note that any name must conform with section 27 of the PBR Act and the International Code of Nomenclature of Cultivated Plants. When accepted, the varietal name is protected under PBR Act.

B12

7. Synonym

A synonym is an alternative name for a variety first lodged overseas, when that first name is unacceptable in Australia. Please note that once accepted, the synonym is also protected. A synonym must also conform with section 27 of the PBR Act

8. Other names

Please list any other names including breeder's code, trade name under which the variety has been known in Australia or overseas.

Breeder's Code

Trade name

Other name

9. Is the variety an Australian native species? (Tick)

Yes ☐ it is mandatory to submit a herbarium specimen to the Australian Cultivar Registration Authority (ACRA) using a Herb 1 form (available from the PBR office/website). Also please indicate the time of flowering and/or ideal time for specimen to be collected and sent to ACRA

No ☒

10. Has this species ever been declared a noxious weed in any Australian State or Territory?

Yes ☐ give details.....

No ☒

11. Country where variety originated

This question refers to the country where the breeding was done.

Australia

12. Are you under any obligation to notify the supplier/owner of the original germplasm about your intention to obtain PBR?

Yes, Notified ☐

No ☐

Not Applicable ☒

13. Are you required, under any agreement with your current employer/funding agency, to inform them of your intention to acquire rights to this variety? (Tick)

Yes, Informed ☐

No ☐

Not Applicable ☒

14. Prior applications in overseas countries (write 'nil' if this is the first application, attach extra sheet if necessary).

Country filed	Date of lodgement	Application number	Current status	Variety name
Nil				

15. Priority is claimed in respect of the earliest overseas application listed above Yes ☐ No ☒

Note: Priority in Australia can only be claimed within 12 months from the date of first overseas lodgement of this variety.

16. Has the variety been sold in Australia with the breeder's consent? Yes ☐ No ☒

If yes, date of first sale...../...../.....and under what variety name?

Has the variety been sold overseas with the breeder's consent? Yes ☐ No ☒

If yes, state the country:....., date of first sale...../...../.....,

and under what variety name?.....

17. List the characteristics or combination of characteristics which make this variety distinct from the 'most similar varieties of common knowledge' and its parents/ source material.

Characteristics must be capable of precise definition to establish a prima facie case that the variety is distinct. Briefly list the important distinctive characteristics of your variety against those of source material and other similar variety(ies). Please attach a photograph of the variety showing its distinct features. While at this stage a comparative photograph is not essential, you are advised to supply a comparative photograph with Part 2 application.

Name of the closest variety (ies)	Characteristic(s) in which the comparator variety(ies) is/are different	State of expression of distinctive characters in your variety	State of expression of character in the comparator variety
-----------------------------------	---	---	--

Examples:

1. Maternal parent	Leaf colour	Variegated	Not variegated
2. Pollen parent	Plant height	Tall	Medium
3. 'Variety X'	Flower colour	Red	Yellow
4. 'Variety Y'	Plant habit	Compact	Spreading

Maternal or source germplasm/variety

'Sir Walter'	internode length	medium-long	long
	(it is estimated that 'B12' is 15-20% shorter on average than 'Sir Walter')		
	leaf width	narrow-medium	medium
	stolon colour	slight purple	intense purple

Other parent(s). If unsure, list possible/probable male parents and a characteristic that make them distinct from the variety

Closest variety

Palmetto	stolon colour	slightly purple	purple absent
----------	---------------	-----------------	---------------

Other varieties

Shademaster	stolon colour	slightly purple	intense purple
-------------	---------------	-----------------	----------------

SECTION C: General Information about the Origin and Breeding Procedure used to produce the variety

18. (i) Origin of the variety (tick boxes and complete the relevant sections)

- ☐ controlled pollination
☒ open pollination
☐ genetic manipulation

- ☐ spontaneous mutation or sport
☐ induced mutation or sport
☐ other origin (specify) eg. seedling selection

(ii) Breeding system of the species (if known)

- ☐ Apomixis
☐ Vegetative
☐ Other

- ☐ Self pollination ☐ Not known
☒ Often self pollinated
☐ Cross pollinated

If you ticked controlled pollination go to section 18A, otherwise go to section 18B.
 Section 18C must be answered in either case.

18A For controlled pollination:

Variety/germplasm name of seed parent(s)

Breeder of seed parent(s)

Is the seed parent protected by PBR in Australia? Yes ☐ No ☐

Is the seed parent protected by PBR in another country? Yes ☐ No ☐

If Yes, particulars of the registration
 (country) (application number) (date registered)

Variety/germplasm name of pollen parent(s)

Breeder of pollen parent(s)

Is the pollen parent protected by PBR in Australia? Yes ☐ No ☐

Is the pollen parent protected by PBR in another country? Yes ☐ No ☐

If Yes, particulars of the registration
 (country) (application number) (date registered)

18B. For origin other than controlled pollination:

Variety/germplasm name of parent..... 'Sir Walter'

Breeder of parent Brent Redman

Is the parent protected by PBR in Australia? Yes ☒ No ☐

Is the parent protected by PBR in another country? Yes ☐ No ☒

If Yes, particulars of the registration
 (country) (application number) (date registered)

18C. Answer the following questions irrespective of mode of origin

Name of the original breeder(s) who conducted or directed the work :..... Todd Layt

Main selection criteria used to develop this variety :..... green stems (stolons), shorter internodes

Property and/or town and country where the work was conducted :..... Clarendon, NSW

19(a) Describe the breeding procedures used to initiate the new variety *Please include information on when and where the observations were first made. Also include the number of cycles of selection, mode of propagation between generations, the number generations the variety has been maintained in its present form, the occurrence of any off types and any other information that is relevant. This information will help to assess whether the activities of the breeder qualify as breeding under section 5(1) of The PBR Act. (Provide the details in a step-wise manner or in chronological order) If required, please attach additional sheets. Texts and diagrams are acceptable.*

The parent plant ('Sir Walter') was grown in isolation and 5000 seed were collected from its open pollination in spring 2000. These were grown and in Feb-Mar 2001 12 plants were selected due to their green stems. In spring 2001 a final single selection (B12) from these 12 seedlings was made based on shorter internode length. Subsequent trialling against the parent and other known varieties has shown this new variety to be uniform and stable through many generations of vegetative propagation whilst maintaining its distinct characters.

Commercial production of 'B12' will be through vegetative propagation.

19(b) Was this variety developed by selection from source material, collected either overseas or in Australia or obtained from a Genetic Resource Centre?

☒ No - Go to Item No. 20

☐ Yes - • provide relevant passport data with this application. Data enclosed - ☐ Yes ☐ No

• Is the source material -

☐ a cultivated/obsolete variety?

☐ a land variety (one which has been traditionally cultivated by farmers for their own use)?

☐ collected from the wild?

☐ special genetic stock (eg breeding lines)?

• is the source material subject to a Material Transfer Agreement? ☐ Yes (enclose a copy)
☐ No

• is the source material subject to FAO trust agreements? ☐ Yes ☐ No

• is the source material still available for inclusion in a comparative trial? ☐ Yes ☐ No

20. Is this variety a Genetically Modified Organism?

Yes ☐ Please provide the Gene Technology Regulator Licence Number/Genetic Manipulation Advisory Committee (GMAC) reference number for the testing of this material.

Gene Technology Regulator Licence Number/GMAC reference No.

..... Date.....

No ☒

SECTION D: General Information about the Genetic Resources Centre and DUS trial

21. Name and location of the Genetic Resources Centre (GRC) where propagating material will be maintained. *A Genetic Resource Centre is a place considered by the Secretary to be suitable for the storage and maintenance of germplasm material and may include a part of a nursery set aside for the purpose of maintaining stock plants. See guidelines for additional information if the proposed GRC is outside Australia.*

13 Ingold Lane Clarendon NSW 2756

22. Please tick one of the following boxes and provide the relevant information *(It is the at the discretion of the PBR office to either accept the use of overseas DUS test report or advise the applicant to conduct a comparative trial in Australia)*

☒ **Sites in Australia where comparative trials including this variety and the most similar known varieties will be available for inspection.** *Where possible, please also include source/parental material (The nominated date should be the optimum time when the examiner can verify the distinctive characteristics claimed in this application).*

LOCALITY	NO. OF PLANTS	STAGE OF GROWTH	ESTIMATE PROCEED DATE
----------	---------------	-----------------	-----------------------

Clarendon, NSW	10+	mature growth	mid December 2002
----------------	-----	---------------	-------------------

☐ **Alternatively, if you intend to use an overseas DUS test report please indicate the name of the testing country, when the test was done and when the data will be available**

It is the sole responsibility of the applicants to procure the test data directly from the relevant testing authority and supply a certified copy of the test report to the PBR office. If the data is already available to you then include a certified copy with this application. Once supplied the PBR office will review the data for acceptability.

TESTING COUNTRY	TEST DATE	ESTIMATED DATE WHEN DATA WILL BE AVAILABLE
-----------------	-----------	--

23. Nominate the date when you wish the examination to occur *(Tick one box): It is mandatory to provide a date. If necessary, it can be changed later in consultation with the PBR office.*

☐ **IMMEDIATELY** (enclose examination fee in full)

☒ **WHEN NOTIFIED BY APPLICANT** (estimated date : 10/12/02)

NOTE: Your application will automatically proceed to examination 12 months after the acceptance of this application unless you have applied for and been granted an extension. The examination fee will fall due 12 months after acceptance regardless of whether the variety has been examined or an extension has been granted.

SECTION E: Authorisation and Declaration

24. I (We) authorise the Plant Breeders Rights Office to exchange with the Plant Breeders Rights Authorities of other countries all necessary information and material related to the variety, provided that the rights of the applicant are safeguarded.

(signature).....*Todd Layt*.....

25. I (we) agree to the release of propagative material prior to the granting of PBR if required for comparative testing or scientific purposes, providing the material is used for no other purpose and all material relating to the variety is returned when the trials are complete.

(signature).....*Todd Layt*.....

26. I (We) apply for Plant Breeders Rights to the variety described in this application.

I/WeTodd Anthony Layt.....
(Full Name)

of13 Ingold Lane Clarendon NSW 2756.....
(Address)

declare that the information given in all parts of and attachments to this application is true and correct.

Todd Layt
(Signature of Applicant or Agent*)

Date *15/11/02* Print Name: Todd Anthony Layt....
Position in company:
(if applicable)

.....
(Signature of Joint Applicant)
(if applicable)

Date / / Print Name:.....
Position in company:
(if applicable)

* When the Agent is signing on behalf of the Applicant then the 'Authorisation of Agent' form must be signed by the Applicant

THE PENALTY UNDER SECTION 75(1)
FOR INTENTIONALLY OR RECKLESSLY MAKING A FALSE STATEMENT
IN SUPPORT OF AN APPLICATION IS SIX MONTHS IMPRISONMENT.

A

DEN1(12/95)

PROPOSED VARIETY NAMES*MUST BE COMPLETED BY ALL APPLICANTS OR THEIR AGENTS*

Avoid processing delays and the cost and inconvenience of variety name changes by adhering strictly to the following instructions when naming a new variety. The purpose of these instructions is to minimise the prospect of proposed names of new varieties not complying with Section 27 of the Plant Breeder's Rights Act 1994 which may lead to infringement or revocation of rights

- *If the variety originated in Australia and no PBR or patent application has been lodged overseas or in Australia proceed direct to question 4*
- *If the variety is pending registration or registered for PBR or a patent overseas or in Australia, answer questions 1-3 first*

1. *In which UPOV member country and on what date was the variety first lodged for PBR or a patent?*

Country	Date	/	/	
---------	------	---	---	--

2. *What variety name was first lodged or accepted by the PBR/patenting authority in a UPOV member country?*

<p>.....</p> <p>This UPOV name will be the official registered name of the variety if not already in common use in Australia. See question 3</p>
--

3. *Do you wish to propose an alternative name (synonym) for the variety because the UPOV name is in common use or is unsuitable for commercial purposes ?* yes ☐ no ☐

If your answer to question 3 is YES proceed to number 4, if NO, sign the form below and attach it to part 1 or fax the completed form to the PBR Office. Facsimile no. (02) 6272 36 50

4. *You are required to list three different names or three different synonyms in order of preference. Do not list any synonyms unless you have answered yes to question 3).*

Before you choose any names ensure that they are not in common usage or trade marked for any plant or variety in Australia. While the PBR office does check its data bases for PBR registered varietal names and those in common use, your experience and assistance is required to ensure that checking is done more comprehensively.

Preferably choose one or two-word variety names. Do not include dashes or punctuation marks. Include numbers in the name only if customary for the species.

First preference	B12
------------------	-----

Second preference	
-------------------	--

Third preference	
------------------	--

Signature.....*Todd Layt*.....

Date *15/11/02*

NameTodd Anthony Layt.....

Address of applicant.....13 Ingold Lane.

.....Clarendon NSW 2756.....

Form QP1(07/96)

NOMINATION OF A QUALIFIED PERSON

Nomination of a qualified person must accompany part 1 of the application for PBR

- To be completed by the applicant or their agent at the time of the initial application and attached to part 1 of the application for PBR. If accredited as a QP for the species, the applicant/agent can nominate themselves.
- If the applicant or agent is not accredited by the PBR Office as a QP there are two options available:
 - the applicant or agent can complete this form and simultaneously apply for accreditation or,
 - the applicant can select an accredited consultant qualified person from the list in appendix 3 of *Australian Plant Varieties Journal*
- It is strongly recommended that you contact the selected qualified person as soon as possible and use this form as a guide to come to an understanding with them on what role they will play in the application process.

Name of the variety	B12
---------------------	-----

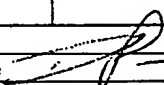
Name of nominated qualified person (QP)	Ian Paananen
---	--------------

Please answer all questions by ticking ☐ the appropriate box

The nominated QP is accredited by PBR as a:	yes <input checked="" type="checkbox"/>	no <input type="checkbox"/>
• consultant qualified person	yes <input type="checkbox"/>	no <input checked="" type="checkbox"/>
• non-consultant qualified person		
• The QP will be responsible for, and certify, this application for PBR	yes <input type="checkbox"/>	no <input checked="" type="checkbox"/>
I intend the nominated QP to perform the following functions:		
• review the application documents related to the above variety first filed in another UPOV member country and make recommendations to PBR on their suitability for examination without a DUS test growing in Australia	yes <input type="checkbox"/>	no <input checked="" type="checkbox"/>
• perform those functions ticked <input type="checkbox"/> in the box below if PBR requires a comparative DUS test growing in Australia as part of the application process	yes <input checked="" type="checkbox"/>	no <input type="checkbox"/>

Tick ☐ only those functions that the QP has agreed to perform in relation to this application

<input checked="" type="checkbox"/> • completion of part 1 of the application form <input type="checkbox"/> • advice on and availability of the most similar varieties of common knowledge <input checked="" type="checkbox"/> • planning the test growing trial <input type="checkbox"/> • recommending the most appropriate trial site for the varieties in the trial <input type="checkbox"/> • choice of the trial site <input type="checkbox"/> • supervision of the layout and planting of the trial <input type="checkbox"/> • planting the trial <input type="checkbox"/> • care and maintenance of the trial <input type="checkbox"/> • instruction to applicant on the timing and nature of observations/measurements needed	<input checked="" type="checkbox"/> • make observations/take measurements to comply with approved DUS test guidelines <input checked="" type="checkbox"/> • perform the necessary statistical analysis of the measurements to determine DUS <input type="checkbox"/> • provide observations, data and statistical analysis of the DUS trial for the applicant to complete part 2 of the application form <input checked="" type="checkbox"/> • completion of part 2 of the PBR application <input checked="" type="checkbox"/> • verification of the field trial, observations, data and statistical analysis <input checked="" type="checkbox"/> • certification of the application <input checked="" type="checkbox"/> • provision of a standard description of variety in the PBR approved format <input checked="" type="checkbox"/> • provide a single colour print of the variety showing distinctness characters
--	--

Name of QP	Ian Paananen	Signature		Date	22-11-02
------------	--------------	-----------	---	------	----------